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No. 58710-2-I

IN THE COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

SCOTT WINEBRENNER,

Defendant/Petitioner

v.

CITY OF SEATTLE,

Plaintiff/Respondent.

2007 JUN 19 AM 10:43

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON

PETITIONER'S REPLY BRIEF

Damon A. Platis
WSBA No. 24719

Law Office of Damon A. Platis
P.O. Box 691
Clinton, WA 98236
Tel (360) 341-4010
Fax (360) 341-2433

ORIGINAL

A. REPLY ARGUMENT

Counsel erroneously indicates Winebrenner's opening brief fails to address basic legal issues and does not contain basic legal analysis. He also states the brief is a word for word copy of the responsive brief filed by Quezada, the matter joined for argument with this case. Well, it is under RAP 10.1(g).

The arguments advanced by Quezada and incorporated and adopted by Winebrenner dictate the only plausible correct construction of the DUI sentencing statute as it applies to defendants similarly situated to Winebrenner and Quezada who will undoubtedly face district courts in the future.

Under the City's erroneous interpretation of the sentencing statutes, instead of a first and second offense, as the law dictates, the court is *required* to impose much harsher penalties by treating both offenses as a second offense. Like Quezada and Winebrenner, a defendant arrested and charged with his first DUI and enters into a deferred prosecution program, and years later, charged and convicted of the same offense. Under RCW 46.61.5055, the court

must treat the earlier offense giving rise to the deferred prosecution as a "prior offense" for purposes of the mandatory minimum. This means that the subsequent offense is punished as a second offense, rather than a first. See RCW 46.61.5055(12)(a); Jenkins, supra, at 290.

Since Winebrenner's 2001 deferred prosecution was revoked based on the new 2005 reckless driving conviction, the 2001 DUI offense must be treated as his first offense. Winebrenner has been punished for a "second" DUI amended to Reckless Driving which occurred in 2005. Had he not plead to the Reckless Driving amended charge he would have been sentenced to the DUI penalties for a second offense had he tried the DUI charge and was convicted at trial.

Because the 2005 offense was not committed prior to the 2001 DUI, it is not a prior offense. The result is the defendant is properly punished for a first and second offense. Under the City's interpretation of the statute, however, there is no first offense in this scenario. Instead, the court is required to punish the defendant as if he committed two inde-

pendent second offenses: the 2001 deferred prosecution is a "prior offense" for the 2005 DUI, and the 2005 DUI is then treated as prior offense for the 2001 DUI. This reasoning is flawed, and fundamentally unfair to defendants in this position.

DATED this 18th day of June, 2007.



DAMON A. PLATIS, WSBA 24719
Attorney for Appellant/Petitioner Scott Winebrenner

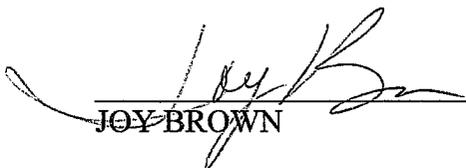
1
2
3
4 Via Messenger

5 And an original and one true copy of Petitioner's Reply Brief to:

6 Clerk of the Court
7 Court of Appeals, Division I

8 Via Facsimile
9 Via First Class Mail
 Via Messenger

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11 DATED this 18th day of June, 2007, at Clinton, Washington.

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13 _____
 JOY BROWN